IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

MFA.No. 1376 of 2000(D)

OP(MV).145/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALA DT.23.3.2000.

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APPELLANT: 2ND RESPONDENT

UNITED INDIA INSURANCE COMPANY LIMITED, PONKUNNAM BRANCH, NOW REP.BY ITS ASSISTANT MANAGER, MOTOR 3RD PARTY CLAIMS OFFICE, VETTUKATTIL BUILDINGS, IVTH FLOOR, KOCHI- 682 016.

BY ADV. SRI.P.MURALEEDHARAN

RESPONDENTS: CLAIMANTS/ RESPONDENT NO.1.
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1. **K.J.MATHEW @ MATHEW JOSEPH, KANIYAMPARAMBIL, KAPPADU P.O., KALAKETTY, KANJIRAPPALLY.**

2. **LALY JOSEPH, MAJAROOR, ANAKKALLU P.O., KANJIRAPPALLY.**

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/08/2007 , ALONG WITH MFA NO. 739 OF 2002 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.F.A NO.1376/2000

ORDER ON CMP. NO.8392/2000 IN MFA. NO.1376/2000

DISMISSED

07.08.2007 **SD/- J.B.KOSHY, JUDGE**

SD/- V.GIRI, JUDGE

/TRUE COPY/

P.S. TO JUDGE

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J.B.KOSHY & V.GIRI,JJ.

M.F.A.NO.1376 of 2000
& 739 of 2002

Dated this the 7th day of August, 2007.

JUDGMENT

KOSHY,J.

A pedestrian, met with an accident on 24.10.1989, due to the negligence of the driver of the vehicle insured by the appellant-insurance company in M.F.A.No.1376/00. He was aged 42 years at the time of accident and he was a driver by profession. According to the claimant (appellant in M.F.A.No.739/02), Rs.3,000/- was his monthly income. For 2 years, he was under treatment. The tribunal awarded a total compensation of Rs.2,72,400/- with 12% interest. According to the insurance company, the policy was an Act policy, taken under the Old Act (Motor Vehicles Act, 1939). The accident occurred on 24.10.1989 within four months from the expiry of the Old Act and therefore, it is contended that the liability is limited to Rs.50,000/-. But the policy produced would show that it is a comprehensive policy. Whatever it may be, there was no contention for the insurance before the tribunal that its liability is limited. Even though the existence of the policy

was denied in paragraph 2 of the written statement, all other contentions raised therein was regarding the negligence and quantum of compensation awarded. The insurance company has never pleaded that the liability of the company is limited. A copy of the policy was handed over by the counsel for perusal. The policy shows that it was renewed after the commencement of the New Act (Motor Vehicles Act, 1988). The policy was renewed on 19.7.1989 and the accident occurred on 24.10.1989. So, the policy was renewed after the coming into force of the New Act and hence, the limitation of the liability against the 3rd party is not correct. After the New Act came into force, the insurance company cannot take up a contention that its liability is limited as far as 3rd party claim is concerned. Apart from that, there is no pleading in the written statement to that effect. In the award also, it is not stated that such a contention was raised by the insurance company during the course of argument. When such a contention is not raised in the written statement with regard to pleadings on proof, such a contention cannot be taken by the insurance company in

the appeal for the first time. Therefore, the appeal filed by the insurance company is liable to be dismissed.

2. The claimant has filed an appeal, M.F.A.No.739/02 contending that the compensation awarded is negligible. It is true that the appellant/claimant suffered very serious injuries. The tribunal has assessed the permanent disability at 33.95% on the basis of medical evidence. As stated above, the claimant was a driver by profession. The accident occurred in 1989. Considering the year of accident and the percentage of interest (12%) granted, we are of the opinion that the total compensation of Rs.2,72,400/- granted by the tribunal is just and reasonable and no interference is called for in the award.

Accordingly, both the appeals are dismissed.

Sd/-
(J.B.KOSHY)
JUDGE

Sd/-
(V.GIRI)
JUDGE

sk/

//true copy//

J.B.KOSHY & V.GIRI,JJ.

M.F.A.NO.1376 of 2000
& 739 of 2002

JUDGMENT

7th August, 2007.